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an exception to the hearsay rule, in homicide cases is justified by the sheer necessity of the case. In addition to the guaranty of trustworthiness arising from the sense of the impending death, the victim in a homicide case is describing a recent occurrence and not attempting to relate the facts of the transaction which may have occurred years previous.

There seems to be no necessity for extending this exception to the hearsay rule to civil cases since the declarant has an opportunity in his lifetime to reduce the transaction to writing or to provide other competent evidence. A mere lack of evidence in civil cases seems hardly weighty enough to justify an additional exception to the hearsay rule.

EXECUTORS AND ADMINISTRATORS—CLAIM AGAINST DEVISEE.—The devisee of specific realty mortgaged the land. The administrator attempted to set off against the devisee's interest in the land a judgment obtained subsequent to the mortgage against the devisee for a debt due the estate at the testator's death. *Held*, the administrator has priority over the mortgagees to the extent of his judgment, and the set-off is allowed. *Senneff v. Brackey* (Iowa), 146 N. W. 24.

An administrator can set off against a legatee's interest in the personality a debt due the estate by the legatee, and thus prevent a circuitry of action resulting from the mutuality of demand. *Smith v. Kearney*, 2 Barb. Ch. (N. Y.) 533. But realty ordinarily passes directly to the heir or devisee, not subject to any control by the executor or administrator. Title vests immediately upon the death of the ancestor without the necessity of any demand by the heir or devisee. 2 WOERNER, LAW OF ADMINISTRATION, 438.

The distributive share of the real estate of an heir debtor to the estate of his ancestor is not chargeable with such indebtedness, either as land, or as the proceeds thereof in the hands of the administrator. *Marvin v. Bowlby*, 142 Mich. 245, 105 N. W. 751, 113 Am. St. Rep. 574, 4 L. R. A. (N. S.) 189; *Smith v. Kearney*, *supra*.

But not as strong an argument can be adduced in favor of the administrator's right to priority in case of a devisee as in case of a distributee. There are no funds in the administrator's hands against which a set-off can be made. He would have to become an actor before he could obtain a lien on the land. *LaFoy v. LaFoy*, 43 N. J. Eq. 206, 10 Atl. 266, 3 Am. St. Rep. 312. Set-off of a debt due an estate cannot be made against a specific devise of realty, but it is a race between the administrator and the creditors of the devisee as to priority. *Mann v. Mann*, 12 Heisk. (Tenn.) 245. An unrestricted and absolute devise comes to the devisee free from any lien for debts due by him to the estate. *Dearborn v. Preston*, 7 Allen (Mass.) 192.

Certainly the rights of a third party, a mortgagee of the property, cannot be affected by an unrecorded lien. To allow this would be to nullify the effect of the modern statutes of registry.

EXECUTORS AND ADMINISTRATORS—PROBATE OF WILL—ATTORNEY'S FEES.—A person named executor in a purported will offered such instrument for